
(1996) 08 KL CK 0025

In the High Court Of Kerala

Case No : Income-tax Reference No. 13 of 1991

Commissioner of Wealth-tax

APPELLANT

Vs

S.V. Doshi

RESPONDENT

Date of Decision : 23-08-1996

Acts Referred:

Wealth Tax Act, 1957 — Section 7(1)
Wealth Tax Rules, 1957 — Rule 1D

Citation : (1997) 141 CTR 123 : (1998) 229 ITR 671

Hon'ble Judges : V.V. Kamat, J;P.A. Mohammed, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant;

Judgement

V.V. Kamat, J.—In fact this is a reference case before us pointing out the defect that the respondent-assessee having expired, no steps are taken by the Revenue in spite of the report "addressee expired". In Income Tax References Nos. 35 and 36 of 1990 Commissioner of Income Tax Vs. K.P. Varoo,) decided by us on July 5, 1996, we had a similar occasion where the respondent assessee had expired and efforts in the direction of bringing the heirs and legal representatives were not successful. Since the function of the reference court is to answer the questions referred, taking the assistance of counsel appearing in the matter, we answered the question referred therein. We have relied on the decision of the Allahabad High Court, KISHORI LAL MAKUNDI LAL, IN RE, ., .

2. On hearing learned senior standing counsel for taxes, on the merits, as we find that the answer to the question referred is covered completely by the decision of the apex court in Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, , leaving us to state the legal position for the guidance of the Tribunal. We take up the answer to the question accordingly. The question is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in directing the Wealth-tax Officer to value the shares held by the

assessee by allowing the provision for taxation as a liability without deducting the advance tax payment ?"

3. It would mean that the question relates to the advance tax payment whether it is required to be deducted or whether it is not necessary to be deducted in the process of valuation of the shares held by the assessee, as a provision for taxation.

4. The assessee is a director of the Kesaria Tea Company Ltd. and is concerned with the assessment year 1979-80. A return declaring net wealth of Rs. 4,90,485 was filed on October 18, 1979. The assessee was holding 1,083 shares of Kesaria Tea Co. (P.) Ltd. and has valued them at Rs. 1,18,047. The Wealth-tax Officer did not agree with the valuation. He adopted the provisions of Rule 1D of the Wealth-tax Rules, 1957, in the process of valuation of these 1,083 shares and consequently worked out the market value at Rs. 2,28,175. However, in the process of valuation, the Wealth-tax Officer proceeded to adjust the advance tax paid by the company, shown as such in the balance-sheet of the company, against the provision for taxation, because it was shown also on the liabilities side of the balance-sheet of the company.

5. The Appellate Assistant Commissioner decided to exclude relying on the provisions of Explanation II(ii)(e) of the said Rules.

6. The Income Tax Appellate Tribunal considered the method of valuation. In conclusion reliance was placed by the Tribunal on the decision of this court in COMMISSIONER OF WEALTH-TAX Vs. MAMMAN VARGHESE and OTHERS.,) regarding the valuation of unquoted equity shares. The decision is to the effect that Rule 1D is imperative and directs that the value of an unquoted equity share would have to be determined in accordance with the provisions of the said rule. Respectfully following the said decision that the valuation of unquoted equity shares held by the appellant in Kesaria Tea Co. Ltd., the Tribunal ordered that the share should be valued in accordance with Rule 1D and not on the basis of yield method as adopted by the assessee.

7. The Tribunal referred the above question to this court as it felt that there is divergence of judicial opinion on this point, although the Tribunal relied on the then existing decision of this court referred to above.

8. Be that as it may, the position is more than settled by the decision of the apex court in Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, which would make it necessary for us to direct the Tribunal to deal with the situation in the light of the decision of the apex court.

9. In the case of Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, , the apex court has considered the matter in issue before us in relation to question No. 5 which is to the following effect (page 13) :

"Question No. 5 : How are Sub-clause (a) of Clause (i) and Sub-clause (e) of Clause (ii) of Explanation II to be read and understood ?"

10. In the said decision the apex court has already ruled that Rule 1D of the Wealth-tax Rules, 1957, is perfectly valid and effective for valuing unquoted equity shares of a company. Section 7(1) of the Wealth-tax Act, 1957, is also referred to in this connection defining the expression "value of an asset". The value of an asset, it is observed, is the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date. All that the Wealth-tax Officer has to do is to take the balance-sheet, delete some items from the columns relating to assets and liabilities as directed by Explanation II and then apply the formula contained in Rule 1D of the Wealth-tax Rules, 1957.

11. As stated earlier Explanation II is taken up for consideration with reference to Sub-clause (a) of Clause (i) and Sub-clause (e) of Clause (ii) thereof. At page 31 of the report, in this connection, it is clearly observed that Schedule VI to the Companies Act prescribes the form in which the balance-sheet of a company has to be prepared and in regard thereto out of the four columns provided therein columns Nos. (2) and (3) relate to liabilities and assets. The advance tax paid u/s 210 of the Income Tax Act, though already paid, is invariably found as shown as an asset as required by Schedule VI. In this connection Clause (i)(a) of Explanation II is referred to in the said decision which is to the effect that it shall not be treated as an asset. The apex court observes that to this extent it is in favour of the assessee because the assets as shown in the balance-sheet will stand reduced to that extent. It is in this connection that Clause (ii)(e) is taken up for consideration and this is in the event of a situation in case the balance-sheet specifies any amount as "provision for taxation" in the column of liabilities. It is then that the Wealth-tax Officer would treat only that amount as a liability which is equal to the tax payable with reference to the book profits. The phrase in Clause (ii)(e) "amount representing provision for taxation" is understood as qualifying the following words ; "other than the amount referred to in Clause (i) (a)". It is then observed with reference to the balance-sheet that the amount referred to in Clause (i)(a) is shown as an asset whereas Clause (ii)(e) speaks of the said amount as liability in the balance-sheet.

12. Referring to this apparently anomalous situation, the reasoning proceeds further that there will be no occasion for the Wealth-tax Officer to rely upon the said words "other than the amount referred to in Clause (i)(a)". In fact reading Clause (i)(a) and Clause (ii)(e) it is observed that the two clauses are complementary to each other and it will have to be appreciated that the advance tax paid is not really an asset but as the proforma of balance-sheet in Schedule VI to the Companies Act requires it to be shown as such it becomes apparent as appearing in both the sides of the balance-sheet. It is in this process of reasoning, it is observed in *Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others*, that if in the provision for taxation made in the column of liabilities in the balance-sheet, the amount of advance tax already paid is again shown as a liability, it will not be shown as a liability as such because the advance tax has already gone out of the profits and been debited in the account books of the company. Thus the true function of the above two

clauses (a) and (e) is understood as being complementary with regard to the situation. It is indeed reflecting the true situation leading to the conclusion that as a provision for taxation, the amount of advance tax already paid gets justifiably entitled to be deducted even if it is shown both as an asset and liability, an anomalous situation apparently as a result of Schedule VI to the Companies Act.

13. We have relied on the decision of the apex court which answered several such questions, because the position is declared by the said decision of the apex court.

14. In the light of the above reasoning, we answer the question in the negative-- in favour of the Revenue and against the assessee.

15. A copy of the judgment under the seal of this court and the signature of the Registrar shall be sent to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.